# SIKKIM

# GOVERNMENT GAZETTE

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**GOVERNMENT OF SIKKIM**
**HOME DEPARTMENT**

**No.42/Home/2007** **Dated: 25.4.2007**

**NOTIFICATION**

Whereas the National Human Rights Commission in its letter dated September 26th, 2003 has advised all the States/ Union Territories Governments to adopt and follow uniform standard in the matter of release of convicted prisoner undergoing life imprisonment and also those prisoners who fulfill the conditions of eligibility of premature release;

And whereas the State Government has deemed it expedient to issue necessary guidelines for the purpose of considering the case of the convicted prisoners serving life imprisonment for premature release under the provision of section 432,433 and 433A of the code of Criminal procedure, 1973;

And whereas the eligibility condition for premature release of other prisoners not covered by this notification shall be governed by the guidelines laid down in the Prison Manual;

Now, therefore, the State Government on due consideration hereby issues the following guidelines in the matter, namely:-

1. **Composition of the State Sentence Review Board**;-

(1) The State Sentence Review Board constituted vide Home Department's notification no. 57/Home/2003 dated 27/08/2003 to consider the premature release of convicted prisoners are as follows:-

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| i) | Principal Secretary, Home Department | - | Chairman |
| ii) | Addl. Secretary/ Joint Secretary, Law Department | - | Member |
| iii) | Deputy Inspector General of Police (Range) | - | Member |
| iv) | Sr.Supdtt. of Police/Prisons, | - | Member Secretary |

(2) The recommendation of the State Sentence Review Board shall not be invalid merely by reason of any vacancy in the Board or the inability of any Member to attend the Board meeting. The meeting of the Board shall not, however, be held if the quorum is less than 3 (three) Members including the chairman.

2 **Periodicity of the Board's meeting**:-

The State Sentence Review Board shall meet at least once in a quarter at the State Headquarters on the date to be notified to Members at least ten days in advance with complete agenda papers.However, it shall be open to the Chairman of the Board to convene a meeting of the Board more frequently as may be deemed necessary.

**3 Eligibility for premature release.**

The following category of convicted prisoner shall be eligible to be considered for premature release by the State Sentence Review Board.

(1) Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of Section 433 A of Criminal Procedure Code,1973 shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 (fourteen) years of actual imprisonment i.e. without remission. It is, however, clarified that completion of 14 (fourteen) years in prison by itself would not entitle a convict to automatic release from the Prison and the State Sentence Review Board shall have the discretion to release a convict, at an appropriate time in all cases considering the circumstances on which the crime was committed and other relevant factors namely:-

a) Whether the convict has lost his potential for committing crime considering his overall conduct in jail during the 14 (fourteen) year's incarceration;
b) the possibility of reclaiming the convict as a useful member of the society; and
c) socio-economic condition of the convict's family.

(2) In no case, total period of incarceration including remission shall exceed twenty years.

(3) Section 433A of the Code of Criminal Procedure, 1973 was enacted to deny premature release before completion of 14(fourteen) years of actual imprisonment to such persons who have been sentenced to imprisonment for life on being convicted for an offence for which the death is one of the punishments provided by law or where a sentence of death imposed on a person has been commuted into one of imprisonment for life under section 433 of the Code. With this category a reasonable classification can be made on the basis of the magnitude of brutality and gravity of the offence for which the convict was sentenced to life imprisonment. Certain categories of convicted prisoners undergoing life sentence would be entitled to be considered for premature release only after undergoing imprisonment for 20 (twenty) years including remissions. The period of incarceration inclusive of remission in such cases should not exceed 25(twenty-Five) years. Following categories of cases which are not to be taken as exhaustive but illustrative may kept in view, namely:-

(a) Convicts who have been imprisoned for life for murder in heinous cases such as murder with rape, murder with dacoity, murder involving an offence under Protection of Civil Rights Act, 1955, murder for dowry, murder of a child below 14(fourteen) years of age, multiple murder, murder committed after conviction while inside the jail, murder during parole, murder in a terrorist incident, murder in smuggling operation, murder of a public servant on duty;
(b) Gangsters, contact killers, smugglers, drug traffickers, racketeers awarded life imprisonment for committing murders as also the perpetrators of murder committed with pre-medication and with exceptional violence or perversity;
(c) Convicts whose sentence has been commuted to life imprisonment.

(4) All other convicted male prisoners not covered by section 433-A of Criminal Procedure Code,1973 undergoing the sentence of life imprisonment would be entitled to be considered for premature release after they have served at least 14 (fourteen) years of imprisonment inclusive of remission but only after completion of 10(ten) years actual imprisonment i.e. without remission.

(5) The female prisoners not covered by section 433-A Criminal Procedure Code,1973 undergoing the sentence of life imprisonment would be entitled to be considered for premature release after they have served at least 10(ten) years of imprisonment inclusive of remissions but only after completion of 7(seven) years actual imprisonment i.e. without remissions.

(6) Cases of premature release of persons undergoing life imprisonment before completion of 14(fourteen) years of actual imprisonment on grounds of terminal illness or old age etc. can be dealt with under the provisions of Article 161 of the constitution and old paras 3,4 and 3.5 are therefore redundant and omitted.

(7) Women offenders sentenced for infanticide: their cases should be reviewed immediately on admission in prison and they should be sent to the care of voluntary organizations of good repute for a reasonable period of time.

(3) The Superintendent of Jail shall make reference to the District Magistrate /Superintendent of Police of the district where the prisoner was ordinarily residing at the time of the commission of the offence for which he was convicted and sentenced or where he is likely to resettle after his release from jail However in case the place where the prisoner was ordinarily residing at the time of commission of the offence is different from the place where he committed offence, a reference shall also be made to the District Magistrate / Superintendent of Police to express his views in this regard to the desirability of the premature release of the prisoner.

(4) On receipt of the reference the concerned District Magistrate / Superintendent of Police shall cause an inquiry to be made in the matter through senior police officer of appropriate rank and based on his own assessment shall make his recommendations. While making the recommendations the District Magistrate / Superintendent of Police shall not act mechanically and oppose the premature release of prisoner on untenable and hypothetical grounds apprehensions. In case the District Magistrate/ Superintendent of Police is not in favour of the premature release of the prisoner, he shall justify the same with cogent reasons and material reasons. He shall return the reference to the Superintendent of the concerned jail not later than 30 (thirty) days from the receipt of the reference.

(5) The Superintendent of Jail shall also make a reference to the Probations Officer In-Charge of the District and shall forward to him a cope of his note. On receipt of the reference, the probation Officer In-charge shall either hold an enquiry, or get an inquiry done, for the desirability of premature release of the prisoner taking into the consideration his family and social background, his acceptability by his/ her family members and the society, prospects of the prisoner for rehabilitation and leading a meaningful life as a good citizen. He will not act mechanically and recommend each and every case for premature release. In either case he should justify his recommendation by reasons material. The Probation Office shall furnish his report / recommendations to the Superintendent of jail not later than 30 (thirty) days from the receipt of the reference.

(6) On receipt of the report / recommendations of the District Magistrate / Superintendent of Police and the Probation Officer, the Superintendent of Jail shall put up the case to the next higher authority of Prison at least one month in advance of the proposed meeting of the Sentence Review Board. The said authority shall examine the case bearing in mind the report / recommendations of the Superintendent of Jail, District Magistrate / Superintendent of Police and Probation Officer and shall make his own recommendation with regard to the premature release of the prisoner or otherwise keeping in view the general or special guidelines laid down by the Government of the Sentence Review Board. Regard shall also be had to various norms laid down and guidelines given by the Apex Court and various High Courts in matter of premature release of prisoners shall also be given due consideration.

**5. Procedure and guidelines for the Review Board:-**

(1) The Chairman shall convene a meeting of the Sentence Review Board on a fixed date and time at the State headquarters and advance notice of which shall be given to the Chairman and Members of the Board at least ten days in advance of the scheduled meeting and it shall accompany the complete agenda papers i.e. the note of the Superintendent of Jail, recommendations of the District Magistrate / Superintendent of Police, Probation Officer and that of the superior Jail authority alongwith the copies, documents if any.

(2) A meeting shall ordinarily be chaired by the Chairman and if for some reasons he is unable to be present in the meeting it shall be chaired by the Secretary, Law-cum-Legal Remembrancer. The Member Secretary shall present the case of each prisoner under consideration before the Sentence Review Board. The Board shall consider the case and give its view. As far as practicable, the Sentence Review Board shall endeavor to make unanimous recommendation. However, in case of dissent, the majority view shall prevail and will be deemed to be decision of the Board. If equal numbers of members are of opposing views the decision of the chairman will be final.

(3) While considering the case of premature release of a particular prisoner, the Board shall keep in view the general principles of amnesty remission of the sentences as laid down by the State Government or by Courts as also the earlier precedents in the matter. The paramount consideration before the Sentence Review Board being the welfare of the prisoner and the society at large. The Board shall not ordinarily decline a premature release of a prisoner merely on the ground that the police has not recommended his release on certain farfetched and hypothetical assumption. The Board shall take

(8) Women offenders who have committed crime under compulsion and /or under social and cultural pressures: their cases should also be reviewed immediately on admission in prison for sending them to the care of voluntary organizations of good repute.

(9) Women offenders sentenced to life imprisonment: on completion of seven years of imprisonment, including remission, except those covered under Section 433-A of Cr.P.C 1973, whose cases will be considered only after completing 14 years actual imprisonment.

(10) Non-Habitual male and adolescent offenders, (other than those sentenced to imprisonment, for life),sentenced to undergo more than one year of imprisonment on undergoing half of their substantive sentence, including remission, subject to condition that they shall not be actually released unless they have undergone at least one year of sentence including remission.

(11) Non-habitual women offenders,(other than those sentenced to imprisonment for life), sentenced to a term of imprisonment of more than one year, on undergoing half of their substantive sentence, including remission, whichever is less. This would be subject to the condition that they shall not be actually released unless they have undergone at least one year's imprisonment including remission.

(12) Habitual offenders,(other than those sentence to imprisonment for life) sentenced to five years or more of imprisonment on completion of two thirds of their sentence including remission, subject to the condition that they shall not be released unless they have undergone at least five year of imprisonment including remission.

(13) Prisoners convicted of offences such as rape, dacoity, terrorist crimes, kidnapping smuggling(including those convicted under NDPS Act) , Prevention of Corruption Act Immoral Traffic Prevention Act offices against State, and undergoing life imprisonment, after completion of 14 (fourteen) years of sentence inclusive of remission.

(14) Prisoners convicted of offences mentioned in Para (viii), other than those sentenced to imprisonment for life, or to a term of imprisonment of 5(five) years and above, after competing three-fourths of the sentence including remission, subject to the condition that they shall not be released unless they have undergone at least 5 (five) years of sentence including remission.

(15) Old (above 65 years of age ) and infirm offenders (other than those serving life imprisonment) sentenced to imprisonment for one year and more, on completion of one third of the substantive sentence including remission, subject to the condition that they shall not be actually released unless they have undergone at least one year of imprisonment including remission.

(16) Offenders certified by a designated Medical Board to be suffering from incurable diseases likely to prove fatal, whenever such a situation arises.

(17) Any other cases of premature release as framed under the rule.

**4. Procedure for processing of the cases for consideration of the Review Board:**

(1) Every Superintendent of Jail who has prisoners undergoing sentence of imprisonment for life, shall initiate the case of the prisoner at least 3 (three) months in advance of the date when the prisoner would become eligible for consideration of premature release as per the criteria laid down by the state Government in that behalf.

(2) The Superintendent of Jail shall prepare a comprehensive note in each case giving out the family and society background of the prisoner, the offence for which he was convicted and sentenced and the circumstances under which the offence was committed. He will also reflect fully about the conduct and behavior of the prisoner in the jail during the period of his incarceration, behavior conducted pattern and jail offences, if any, committed by him and punishment awarded to him for such offence (s). A report shall also be made about his physical or mental health of any serious ailment with which the prisoner is suffering entitling his case special consideration for his premature release. The note shall also contain recommendation of the Jail Superintendent whether he favours for the premature release of the prisoner or not and in either case it shall be supported by adequate reasons.

into account and the circumstances in which the offence was committed by the prisoner and whether he has the propensity and is likely to commit similar or other offence again.

(4) Rejection of the case of the prisoner for premature release on one or more occasion by the Sentence Review Board will not be a bar for reconsideration of his case. However, the reconsideration of the case of a convict already rejected shall be done only after the expiry of a period of the one year from the date of last consideration of his case.

(5) The recommendations of the Sentence Review Board shall be placed before the competent authority without delay for consideration. The competent authority may either accept the recommendations of the Sentence Review Board or reject the same on the grounds to be stated or may ask the Sentence Review Board to reconsider a particular case. The decision of the competent authority shall be communicated to the concerned prisoner and in case the competent authority has ordered for his premature release, the prisoner shall be released, forthwith with or without condition.

**By order and in the name of the Governor.**

**N. D. CHINGAPA**
**CHIEF SECRETARY**
**F. No. 236/GOS/JAIL/2003**